FAXED

FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 27, 1997

BY FAX

Mary Catherine Malin, Esquire
SFP Office
Office of the Legal Advisor

RE: MUR 4583

Dear Ms. Malin:

Thank you for returning my call on Friday and per our short talk that afternoon, attached are the three things I promised, i.e. the Commission's January 16th response to Minister Habibullah's December 20th letter, the 1991 "factual and legal analysis" sent to the Taiwan instrumentality in Matter 2892, as well as the Conciliation Agreement reached with it in early 1992. As you will see, the 1991 analysis includes the Second Circuit's decision, but not the Supreme Court's affirmance, in Weltover. Also enclosed for your information is the Commission's 1994 press release upon closure of the MUR 2892 case. As I mentioned, unless waived by a respondent, FEC civil enforcement investigations are strictly confidential until closed, 2 U.S.C. § 437g(a)(12), and as there has been no such waiver in this matter, the attached correspondence is confidential and may not be made public by any person. Therefore, please ensure your office maintains its continuing confidentiality (in contrast, the analysis as well as the conciliation agreement are now a matter of public record).

After you have had a chance to look over these materials, please phone me to continue our discussions.

Sincerely,

Jonathan Bernstein
Assistant General Counsel

Attachments

(2)

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 19, 1991

Daniel K. Mayers, Esq.
David Westin, Esq.
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037

RE: MUR 2892
Coordination Council for North American Affairs

Dear Messrs. Mayers and Westin:

On May 1, 1990, the Federal Election Commission found reason to believe that the Coordination Council for North American Affairs violated 2 U.S.C. § 441e. At your request, on November 13, 1991, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

Enclosed are a conciliation agreement that the Commission has approved in settlement of this matter and a factual and legal analysis in support of the Commission's reasoning. If your client agrees with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Mark Allen, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosures
Factual and Legal Analysis
Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2892
Coordination Council of North American Affairs	)	
	)	

FACTUAL AND LEGAL ANALYSIS

I. BACKGROUND

On June 6, 1989 the Federal Election Commission notified the Coordination Council of North American Affairs ("CCNAA" or "Council") of a complaint alleging that the Council had violated 2 U.S.C. § 441e by making a $250 contribution to Friends of Fasi, a mayoral candidate. In its response to the complaint, CCNAA acknowledged that it had made the alleged contribution. On May 1, 1990 the Commission found reason to believe that CCNAA had violated 2 U.S.C. § 441e. CCNAA responded through counsel in a letter dated June 7, 1990 that it is an instrumentality of a foreign sovereign and that it is entitled to the immunities granted by the Foreign Sovereign Immunities Act. 28 U.S.C. § 1602 et seq.

On June 28, 1990 counsel for the respondent met with the Office of the General Counsel to discuss possible conciliation. Also at this meeting, CCNAA explained its status and asserted that the $250 contribution in question was an isolated, unauthorized incident. On July 25, 1990 this Office received a response to its interrogatories ("Response"), an explanation of the respondent's claim of sovereign immunity, and a request for pre-probable cause conciliation including counsel's firm representation that the contribution "was an

isolated incident, that there are no other cases in which the CCNAA or its employees made contributions to political campaigns in the United States" (Response, pages 18-19). In the course of the investigation, however, the Commission learned that CCNAA had made an additional contribution, to Friends of Frank Fasi for $500.

Because of this additional contribution, the Commission on October 1, 1990 rejected CCNAA's request for pre-probable cause conciliation, and sent additional questions to CCNAA on October 19, 1990. The Commission received CCNAA's response on December 6, 1990. The response acknowledges the second contribution and assures that CCNAA made no other contributions, based on a search of the records of CCNAA's Honolulu office.

After setting out the applicable statutes, this analysis briefly explains the doctrine of sovereign immunity and then concludes that CCNAA is an entity entitled to such immunity in general. The analysis then demonstrates that CCNAA's acts in this matter are not subject to immunity and that it is subject to civil penalties. Finally, the analysis discusses how FECA, not the doctrine of sovereign immunity, controls this matter.

II. ANALYSIS

A. Applicable Statutes

The basis of the complaint in this matter is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value . . . in connection with any election to any political office or

> in connection with any primary election, convention, or caucus held to select candidates for any political office; . . . .

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes "a government of a foreign country."

In 1979, when the United States terminated governmental relations with Taiwan, Congress enacted the Taiwan Relations Act regarding the application of United States laws and international agreements to Taiwan. 22 U.S.C. §§ 3301-3316. Section 3303(b) provides that Taiwan be accorded the status of a foreign government under U.S. law. "Taiwan" is defined to include any instrumentalities of the government of Taiwan. 2 U.S.C. § 3314(2).

The Foreign Sovereign Immunities Act, Public Law No. 94-583, 90 Stat. 2891 (1976) is set out at 28 U.S.C. §§ 1602-1611. The following provisions are relevant to this matter.

> 28 U.S.C. § 1602. Findings and declaration of purpose
>
> The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. . . . Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.
>
> 28 U.S.C. § 1603. Definitions
>
> For purposes of this chapter --
> (a) A "foreign state", . . . includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).
> (b) An "agency or instrumentality of a foreign state"

means any entity --

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in 1332(c) and (d) of this title, nor created under the laws of any third country.

* * *

(d) A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

28 U.S.C. § 1604. Immunity of a foreign state from jurisdiction

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act [enacted Oct. 21, 1976] a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 and 1607 of this chapter.

28 U.S.C. § 1605. General exceptions to the jurisdictional immunity of a foreign state

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case --

* * *

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere . . . .

28 U.S.C. § 1606. Extent of liability

As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a

> foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages . . . . [emphasis added]

B. Application and Implementation of the Law

CCNAA asserts that as an instrumentality of a foreign sovereign it is immune in this matter from both administrative proceedings before the Commission and from any judicial proceedings that the Commission might seek to enforce a Commission order (Response, pages 2-3).

1. Sovereign immunity, under modern law, is limited to to a state's public acts

There is wide acceptance among nations today of the "restrictive theory" of sovereign immunity, that is, that the sovereign immunity of foreign states be restricted to cases involving the state's acts which are sovereign or governmental in nature, i.e., public acts, as opposed to acts which are either commercial in nature of those which private persons normally perform. House Judiciary Committee, Jurisdiction of United States Courts in Suits Against Foreign States, H.R. Rep. No. 1487, 94th Cong., 2d Sess. 14, reprinted in U.S. Code Cong. & Admin. News, 6604, 6613 (1976) ("House Report"). In 1976, Congress passed the Foreign Sovereign Immunities Act ("FSIA") to accomplish four purposes: (1) to codify the restrictive principle of sovereign immunity, i.e., the immunity of a foreign state is restricted to suits involving the foreign state's public acts, (2) to ensure that the restrictive principle would be applied by U.S. courts, (3) to provide a statutory procedure for service upon and obtaining in personam

jurisdiction over a foreign state, and (4) to limit a foreign state's immunity from execution of judgment. House Report at 7-8, reprinted in U.S. Code Cong. & Admin. News at 6605-06. The House Report noted that the restrictive principle was accepted by international law, and that such recognition was a reason for codifying the principle in U.S. law. House Report at 14, reprinted in U.S. Code Cong. & Admin. News at 6613. The Supreme Court affirmed the constitutionality of the FSIA in Verlinden B.V. v. Central Bank of Nigeria, 461 U.S. 480 (1983), thus limiting the immunity of a foreign state to its public acts.

2. CCNAA is an instrumentality of a sovereign, with all the rights and privileges thereof

For the purposes of FSIA, the Council is an instrumentality of Taiwan. While the United States government has no official diplomatic relations with Taiwan, the Taiwan Relations Act provides that United States laws shall apply to Taiwan as they would to any other foreign nation, government or similar entity. 22 U.S.C. § 3303. The Taiwan Relations Act also protects the privileges and immunities of agencies or instrumentalities of the Taiwan government. 22 U.S.C. § 3014. Based on this statute, courts have applied the FSIA to the Council. See Hillen Industries, Inc. v. Coordination Council for North American Affairs, 855 F.2d 879 (D.C. Cir. 1988).

3. For purposes of the FSIA, a campaign contribution is "commercial activity."

A foreign state does not enjoy absolute immunity. The foreign state, or instrumentality thereof, has no right to immunity if the action in question is of a commercial nature.

28 U.S.C. § 1605(a)(2). The FSIA defines "commercial activity" as "either a regular course of commercial conduct, or a particular commercial transaction or act." 28 U.S.C. § 1603(d). This section of the FSIA explicitly states that commercial activity is to be determined by the nature of the specific act in question and not by its purpose, but the statute provides little guidance of what may be defined as "commercial activity."[1]

Courts have stressed the statutory requirement that they should "focus on the specific conduct at issue in the case before [them], rather than the broad program or policy of which the individual transaction is a part." Rush-Presbyterian-St. Luke's Center v. The Hellenic Republic, 877 F.2d 574, 580 (7th Cir.), cert. denied, 493 U.S. 937 (1989).[2] The test courts have used to

1. The legislative history of the FSIA is also not enlightening on this issue. The legislative history suggests that Congress deliberately left the meaning vague and "put [its] faith in the U.S. courts to work out progressively, on a case by case basis ... the distinction between commercial and governmental." Testimony of Monroe Leigh, Legal Advisor for Department of State, Hearings on H.R. 11315 Before the Subcommittee on Administrative Law and Government Relations of the House Committee on the Judiciary, 94th Cong., 2d Sess. at 53 (1976), cited by Texas Trading v. Republic of Nigeria, 647 F.2d 300, 309 (2d Cir. 1981), cert. denied, 454 U.S. 1148, 102 S. Ct. 1012 (1982).

2. At least one court, however, seems to have ignored the requirement that it not look beyond the nature of an act to its purpose by arguing that, "the essence of an act is [often] defined by its purpose." De Sanchez v. Banco Central de Nicaragua, 770 F.2d 1385, 1393 (5th Cir. 1985). Courts in more recent cases have recognized that while the purpose of an activity may be a relevant factor in determining the nature of the activity, purpose alone is not dispositive of the issue of whether the activity is commercial. See, e.g., Weltover, Inc. v. Republic of Argentina, No. 91-7119 (2d Cir. Aug. 13, 1991); Rush, 877 F.2d at 577-78; Joseph v. Office of Consulate General

determine if the conduct is public or commercial is whether it could be performed by a private person. See, e.g., Weltover, No. 91-7119 (2d Cir. Aug. 13, 1991); Rush, 877 F.2d at 578; Joseph v. Office of Consulate General of Nigeria, 830 F.2d 1018, 1024 (9th Cir. 1987), cert. denied, 485 U.S. 905 (1988). In interpreting the FSIA, courts have used this "private person" test to discern what acts are uniquely acts of state and thus do not fall within the "commercial activity" exception. Accordingly, "if a private party could engage in an identical transaction, then the activity is 'commercial,' and sovereign immunity is not an obstacle to suit." Rush, 877 F.2d at 580.

In this instance, CCNAA contributing to a local candidate is indistinguishable from an activity undertaken by a private individual. The Council's contributions thus meet the "private person" test, and so constitute "commercial activity" for purposes of the FSIA. Moreover, the status of the contributions at issue as commercial activity is supported by the legislative history of FSIA. Activities such as a foreign government's employment or engagement of "public relations or marketing agents . . . would be among those included within the definition." House Report at 6615. CCNAA states in its responses that its contributions were for the purchase of reception tickets for a Honolulu mayoral candidate (Response, page 18). The making of contributions and

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(Footnote 2 continued from previous page)
of Nigeria, 830 F.2d 1018, 1023 (9th Cir. 1987), cert. denied, 485 U.S. 905 (1988). These more recent cases suggest court support for the expressed intent of Congress that courts make a determination based on the nature of the act and not the purpose of the act. See 28 U.S.C. § 1603(d).

the appearance at candidate receptions is very much in the line of public relations and is on a different level than a foreign state's "participation in a foreign assistance program administered by the Agency for International Development" that the House Report notes as an example of an "activity whose essential nature is public or governmental" and would not constitute a commercial activity. House Report at 6615. The making of a political contribution does not resemble a sovereign act, and so must be considered commercial activity.

CCNAA acknowledges that it made contributions of $250 and $500 to a campaign for political office. The purpose of such a contribution is not the focus of the inquiry of the Commission or a court, and does not play a role in determining whether the contribution was "commercial activity". Whether CCNAA is generally a commercial or political enterprise is also not the central concern since courts must focus on the specific action in question, i.e., CCNAA's contributions. See Rush, 877 F.2d at 580.

4. CCNAA, as an instrumentality, is not immune from civil penalties.

Section 1606 of the FSIA states that regarding claims for relief with respect to which a foreign state is not entitled to immunity, the state shall be liable in the same manner and to the same extent as a private individual under like circumstances. Thus, as CCNAA has violated FECA by making campaign contributions, it is liable to the Commission for the payment of civil penalties.

This conclusion is unchanged even if the Commission's civil

penalties are considered "punitive." The FSIA states that a foreign state, "except for an agency or instrumentality thereof," may not be held liable for punitive damages. 28 U.S.C. § 1606. The courts have interpreted this to mean that an agency or instrumentality of a foreign state is subject to punitive damages. See Outboard Marine Corporation v. Pezetel, 461 F. Supp. 384, 395 (D. Del. 1978)(the language in section 1606 makes it clear that an agency or instrumentality of a foreign government is subject to punitive damages in a proper case). The federal courts have explicitly stated that CCNAA is an instrumentality of a sovereign. Millen, 855 F.2d 879, 883 ("The CCNAA is an 'instrumentality' established by Taiwan").[3] Therefore, CCNAA is subject to civil penalties, even if regarded as "punitive."

5. Section 441e of the Act provides FEC jurisdiction over respondent regardless of any provisions of FSIA.

As stated above, the Commission has the statutory authority to enforce the prohibition of contributions by foreign governments. The FECA prohibits contributions by foreign nationals. 2 U.S.C. § 441e(a). Per section 441e(b)(1), "foreign national" means a foreign principal as defined at 22 U.S.C. § 611(b). That provision includes "a government of a foreign country." In enacting section 441e, Congress explicitly prohibited foreign governments from contributing to U.S. elections and gave the Commission the authority to enforce the

3. Respondents also concede that CCNAA is a recognized "instrumentality" of Taiwan (Response, page 2).

Act. Thus, even if it were concluded that FSIA would otherwise immunize CCMAA, as next discussed, the specific provision of 441e should govern.[4]

The FSIA addresses the issue of jurisdiction over foreign sovereigns in a general fashion, while section 441e of FECA specifically speaks to the context of foreign sovereign contributions to U.S. elections, explicitly forbidding foreign nationals' (including a government of a foreign country) contributions. Congress granted the Commission exclusive jurisdiction with respect to civil enforcement of FECA. 2 U.S.C. § 437c(b)(1). Such enforcement includes the bringing of suit. See 2 U.S.C. § 437d(a)(6). The courts have long recognized that tension between a statute of general application and a statute which specifically addresses a particular subject must be resolved in favor of the specific statute.

> When one statute speaks in general terms while the other is specific, conflicting provisions may be reconciled by carving out an exception from the more general enactment for the more specific statute.... But even when the literal terms of statutory provisions would allow the specific language to be controlled by the more general, we cannot ignore evidence that Congress intended to address a

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4. Section 441e would supersede any standard of international law which might otherwise require a court to construe a limit on the Commission's authority to investigate foreign sovereigns. Courts strictly construe federal statutes which confer jurisdiction on domestic agencies to avoid possible conflicts with the principles of international law. See Federal Trade Commission v. Compaignie De Saint-Gobain-Pont-A-Mousson, 636 F.2d 1300, 1323 (D.C. Cir. 1980) (citing Murrey v. The Schooner Charming Betsy, 2 Cranch 64 (1804)). However, "courts of the United States are nevertheless obligated to give effect to an unambiguous exercise by Congress of its jurisdiction to prescribe even if such an exercise would exceed the limitations imposed by international law." Id., citing Restatement (Second) of Foreign Relations Law of the United States § 38, Reporters' note 1.

specific situation through special legislation. Stewart v. Smith, 673 F.2d 485, 492 (D.C. Cir. 1982)(citations omitted). In Galliano v. United States Post Office, the court found that specific FECA provisions displaced a broad postal fraud statute. 836 F.2d 1362 (D.C. Cir. 1988). In a case involving the Copyright Act, the court stated that in light of Congress enacting specific FECA provisions, the provisions of the former "must be construed in a manner that will accommodate the Federal Election Campaign Act." National Republican Congressional Committee v. Legi-Tech Corp., 795 F.2d 190, 192 (D.C. Cir. 1986)(citing MacEvoy Co. v. United States, 322 U.S. 102, 107 (1944). To the knowledge of the Commission, there is no prior litigated case involving an agency's specific grant of jurisdiction that conflicts with FSIA.

Respondent cites the precedents of the National Labor Relations Board (NLRB) and Equal Employment Opportunity Commission (EEOC) for the proposition that federal agencies are limited by FSIA regarding their jurisdiction over foreign sovereigns (Response, pages 8-9). The EEOC concludes that it is bound by FSIA and would not initiate an investigation regarding a foreign sovereign if FSIA did not provide jurisdiction for civil suit and the sovereign did not cooperate voluntarily. See Decision No. 85-11, EEOC, 38 F.E.P. Cas. 1876 (July 16, 1985)(instrumentality of foreign sovereign engaging in commercial activity and so does not qualify for general grant of immunity contained in FSIA). Respondent also cites State Bank of India v. N.L.R.B., in which the court did not reach the issue

of the precise limits of the Board's jurisdiction because the commercial operations of the bank brought it outside the scope of the FSIA. 808 F.2d 526, 535 (7th Cir. 1986).

The activities in the matters cited fall within FSIA's commercial exception, so the issue of an agency's jurisdiction that explicitly conflicts with the provisions of the FSIA is not presented. Moreover, these two agencies have general grants of jurisdiction,[5] in contrast to the specific authority granted to the FEC in section 441e.[6]

For the above reasons, FSIA does not pre-empt FECA section 441e. Whether or not respondent's contributions fall into the

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5. The law empowers the EEOC to investigate employers and labor organizations regarding alleged unlawful employment practices. 42 U.S.C. § 2000e-5(b). The NLRB is authorized to investigate employers and labor organizations regarding alleged unlawful labor practices affecting commerce. 29 U.S.C. §§ 158, 160(a). Neither the EEOC nor the NLRB statutes include provisions which explicitly purports to regulate foreign sovereigns.

6. Respondent's only argument that acknowledges the specificity of the FECA provision is to draw an analogy to Argentine Republic v. Amerada Hess Shipping Corp., in which the Supreme Court rejected a claim for jurisdiction under the Alien Tort Claims Act stating that FSIA pre-empts any jurisdiction permitted under the earlier Act. 488 U.S. 428 (1989). See Att. 2, pp. 10-11. We disagree with respondent's analogy. The Alien Tort Claims Act does not explicitly refer to foreign states, see 28 U.S.C. § 1350, and the Court in Amerada Hess pointed out the uncertainty whether the statute even conferred jurisdiction in suits against foreign states. 488 U.S. at 436. The Court specifically noted that this was not "a case where a more general statute is claimed to have repealed by implication an earlier statute dealing with a narrower subject." Id. at 438. Rather, the Court concluded, the FSIA provisions simply "preclude a construction of the Alien Tort Statute that permits the instant suit." Id. Thus, even though the opinion's general language of application of FSIA is broad, the Court did not have before it, and did not purport to decide, whether FSIA would de facto invalidate a federal statute that does explicitly apply to foreign states.

"commercial activity" exception in FSIA, the Commission believes that FECA provides jurisdiction over respondent. To assert otherwise would be to read an explicit prohibition of section 441e out of the statute.

In conclusion, the Commission believes that it may assert jurisdiction over respondent because respondent's contributions fall under the commercial activity exception to the FSIA. Moreover, FECA section 441e provides independent jurisdiction over respondent. In light of these conclusions, the Commission agrees to enter into pre-probable cause conciliation with respondent Coordination Council of North American Affairs.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2892
The Coordination Council for North American Affairs	)	
	)	

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Anthony Locricchio, Victoria Creed, Karin Kosoc, and Donna Wong. The Federal Election Commission ("Commission") found reason to believe that The Coordination Council for North American Affairs ("Respondent") violated 2 U.S.C. § 441e.

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. This agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), which provides that unless this agreement is violated, it shall constitute a complete bar to any further action by the Commission against Respondent in connection with this matter.

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent and the Commission have disagreed on various issues in this matter, including the issue of jurisdiction, but because it is desirous of settling this matter

without further dispute, Respondent does not contest that the Commission has jurisdiction over it and the subject matter of this proceeding and enters volunterily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Respondent, The Coordination Council for North American Affairs, is an instrumentality of the government on Taiwan.

2. Respondent falls within the definition of "an agency or instrumentality of a foreign state" as defined in 28 U.S.C. § 1603(b) under the authority of 22 U.S.C. § 3303.

3. Respondent also falls within the definition of "foreign national" as defined in 2 U.S.C. § 441e(b).

4. Foreign nationals are prohibited from contributing money, or any other thing of value, to a candidate for any political office, including any Federal, State, or local office, either directly or through any other person pursuant to 2 U.S.C. § 441e(a) and 11 C.F.R. § 110.4(a).

5. Respondent made $250 and $500 contributions to Friends of Fasi, a campaign for local political office in Hawaii.

V. Respondent made these $250 and $500 contributions in violation of 2 U.S.C. § 441e(a).

VI. Within 30 days from the execution of this Agreement, Respondent will pay a civil penalty to the Federal Election Commission in the amount of Three Hundred dollars ($300.00) pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. Respondent agrees that it shall not make further contributions to any campaigns for political office in the United States, including Federal, State, and local campaigns.

VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

IX. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

2-5-92
Date

FOR THE RESPONDENT:

(Name) Daniel K. Hayes
(Position) Counsel for Respondent
Coordination Council for North American Affairs

Jan 13, 1992
Date

FEDERAL ELECTION COMMISSION
Press Office
999 E Street, N.W., Washington, D.C. 20463
Phone: Local 202-219-4155 Toll Free 800-424-9530

FOR RELEASE
11 A.M., AUGUST 3, 1994

CONTACT: RON HARRIS
SHARON SNYDER
IAN STIRTON
KELLY HUFF

ILLEGAL FOREIGN NATIONAL CONTRIBUTIONS INVESTIGATED BY FEC
--Agency assesses penalties totalling $162,225--

WASHINGTON -- The Federal Election Commission today announced the completion of investigations into alleged illegal campaign contributions by foreign nationals in Hawaiian state and local elections. The violations occurred from 1986 to 1992 and have resulted in civil penalties totalling $162,225 against 26 businesses, individuals, and a government entity.

The Federal Election Campaign Act prohibits foreign nationals (including foreign governments, individuals, political parties, corporations, associations, and/or partnerships with foreign members) from making contributions or expenditures in connection with any U.S. federal, state, or local election, either directly or through another person. Likewise, U.S. candidates for federal, state, or local office are prohibited from accepting contributions from those entities.

The investigations stemmed from three complaints to the FEC lodged from April to November of 1989, focusing on campaign contributions to Hawaiian gubernatorial candidates, Honolulu mayoral candidates, and various Hawaiian State House and Senate campaign committees. The prohibited contributions were from, primarily, domestic subsidiaries or partnerships of Japanese businesses.

The 5-year investigation probed more than $300,000 illegally flowing into more than 140 campaigns over four election cycles. Today's action by the Commission culminates in a total of 18 conciliation agreements by 26 respondents, with penalties ranging from $125 to $38,000. The FEC investigation initially involved 126 respondents, but the majority were dismissed by the Commission because the allegations were not substantiated or the amounts of contributed funds involved were deemed insignificant.

Candidates' campaigns to which contributions were directed were admonished by the FEC for accepting them and were instructed to refund all such contributions. The Commission decided not to pursue more stringent enforcement measures.

-more-

FEC Chairman Trevor Potter and Vice Chairman Danny L. McDonald disclosed the penalties and the closing of the investigation (Matter Under Review, or MUR) in a news conference at the FEC today.

Chairman Potter noted, "...the Commission's interest in this issue is not limited to Hawaii, and is not focused on any one nationality or ethnic group. This case is important for any state with large levels of foreign residents or business activity. One reason we are highlighting the conclusion of this particular investigation is that we believe the prohibition on foreign contributions is not as widely known and understood as it should be through the United States, and especially in the foreign business community."

He also said the FEC has published a new brochure that clarifies and emphasizes the seriousness the Commission places on adherence to the law concerning foreign nationals. The brochure is scheduled to be mailed August 9 to state election officials, American subsidiaries of foreign corporations, Washington embassies, and representatives of foreign nationals.

The FEC is contacting 69 additional Hawaiian state political committees that were not involved in the original probe, but which were discovered to have received illegal funds. They are being informed of the impermissible contributions, the prohibition in the law, and are being instructed to refund all such contributions.

Following is a list of the respondents and amounts of penalties:

MUR 2892 Conciliation Agreements

-18 agreements covering 26 respondents-
(in descending order by penalty amount)

RESPONDENT(S)	AMOUNT OF PENALTY	DATE OF AGREEMENT	AMT OF ILLEGAL CONTRIBS.
1) WEST BEACH ESTATES (Domestic partnership, one corp. partner is domestic subsidiary of Japanese corp.)	$ 38,000	03/15/94	$ 80,295
2) HASEKO (HAWAII), INC. (Domestic subsidiary Japanese parent corp.) GRAHAM BEACH PARTNERS HASEKO REALTY, INC. HASEKO ENGINEERING, INC. HASEKO (EWA), INC. (Subsidiaries of Haseko (Hawaii), Inc.)	$ 30,000	09/07/93	$ 60,830
3) Y.Y. VALLEY CORP. ROYAL HAWAIIAN COUNTRY CLUB (Hawaiian corp. owned by several foreign nationals including the Yasudas [see below]; Royal Hawaiian Country Club wholly-owned by Y.Y. Valley)	$ 23,000	07/21/94	$ 60,390*
4) TETSUO YASUDA a.k.a. HAN SOO CHUN YASUO YASUDA a.k.a. HAN KUK CHUN (Korean nationals living in Japan)	$ 23,000	06/13/94	$ 60,390*
5) HAWAII OMORI CORPORATION (Domestic subsidiary Japanese parent corps.)	$ 8,750	04/10/92	$ 17,754
6) MAUNA LANI RESORT INC. MAUNA LANI RESORT PAC (Domestic subsidiary Japanese parent corp.)	$ 8,000	06/12/92	$ 25,443
7) SANKYO TSUSHO CO. LTD. dba MOKULEIA LAND CO. (Incorporated in Japan)	$ 7,000	08/04/93	$ 13,770
8) AZABU U.S.A. CORPORATION AZABU REALTY, INC. (Domestic subsidiaries Japanese parent corp.)	$ 6,000	03/15/94	$ 13,725

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RESPONDENT(S)	AMOUNT OF PENALTY	DATE OF AGREEMENT	AMT OF ILLEGAL CONTRIBS.
9) HALEKULANI CORPORATION (Domestic subsidiary Japanese parent corp.)	$ 5,000	03/15/94	$ 11,070
10) JAPAN TRAVEL BUREAU INTERNATIONAL, INC. (Domestic subsidiary Japanese parent corp.)	$ 4,500	04/25/91	$ 9,715
11) TAIYO HAWAII CO., LTD. (Incorporated in Japan)	$ 4,200	06/13/91	$ 8,690
12) MASAO HAYASHI (Japanese national)	$ 1,125	04/25/91	$ 2,250
13) ALL NIPPON AIRWAYS CO., LTD. (Incorporated in Japan)	$ 875	12/06/90	$ 1,975
14) DAIEI HAWAII INVESTMENTS, INC. (Domestic subsidiary Japanese parent corp.)	$ 800	04/25/91	$ 1,600
15) MINAMI GROUP (USA), INC. (Corp. owned by a Japanese national - not a domestic subsidiary)	$ 300	04/25/91	$ 1,150
16) COORDINATION COUNCIL FOR NORTH AMERICAN AFFAIRS ("Instrumentality" of the government on Taiwan)	$ 300	01/29/92	$ 750
17) TAKAYUKI MIZUTANI (Japanese national)	$ 250	04/25/91	$ 500
18) TOBISHIMA PACIFIC, INC. (Domestic subsidiary Japanese parent corp.)	$ 125	12/06/90	$ 250
TOTAL OF IMPERMISSIBLE CONTRIBUTIONS:	$310,157*		
TOTAL CIVIL PENALTIES:	$162,225		

* The Yasudas' agreement and the Y.Y. Valley/Royal Hawaiian agreement identify the same $60,390 in impermissible contributions, so this figure counts only once toward the total of impermissible contributions.

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